

Summary of SC93848, *Missouri Bankers Association Inc. and Jonesburg State Bank v. St. Louis County, Missouri, and Charlie A. Dooley*

Appeal from the St. Louis County circuit court, Judge Brenda Stith Loftin
Argued and submitted May 21, 2014; opinion issued November 12, 2014

Attorneys: The bankers were represented by Jane E. Dueker, Charles W. Hatfield and Jamie L. Boyer of Stinson Leonard Street LLP in St. Louis, (314) 259-4559; and the county was represented by Patricia Redington of the St. Louis County counselor's office in Clayton, (314) 615-7042. The Business Bank of St. Louis, which filed a brief as a friend of the Court, was represented by John L. Davidson of John L. Davidson PC in St. Louis, (314) 725-2898.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Certain bankers appeal a circuit court's grant of summary judgment (judgment on the court filings, without a trial) to a county that enacted an ordinance requiring lenders to participate in a mediation program before foreclosing on residential borrowers, to pay certain fees and to face criminal penalties for noncompliance. In a 6-1 decision written by Judge George W. Draper III, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The circuit court erred in granting summary judgment to the county because the ordinance implementing the mediation program was void and unenforceable, and the bankers are not entitled to an award of attorney fees.

Judge Richard B. Teitelman dissents. He would hold that the ordinance is a valid exercise of the county's legislative power under article VI, section 18(c) of the Missouri Constitution because it is tailored precisely to the local symptoms of the foreclosure crisis.

Facts: In 2012, the St. Louis County council adopted an ordinance in response to "the national residential property foreclosure crisis" that implemented a mediation program requiring lenders to provide residential borrowers an opportunity to mediate prior to foreclosure. The ordinance requires the lender to give the homeowner certain written notices and pay certain fees to a mediation coordinator who manages and oversees the mediation program. It also requires the lender to obtain from the mediation coordinator and file with the county assessor a certificate of compliance. The ordinance subjects the lender to criminal prosecution and a fine of up to \$1,000 for failure to comply. The Missouri Bankers Association Inc. and Jonesburg State Bank (the bankers) subsequently sued the county and its county executive (the county), seeking a declaratory judgment (determining the parties' legal rights) and injunctive relief. The circuit court ultimately granted summary judgment (judgment on the court filings, without a trial) to the county, holding that the county had charter authority to enact the ordinance, that the ordinance was a valid exercise of the county's police power, that the ordinance was not preempted by state law, and that the fees associated with the ordinance did not violate the Hancock amendment (article X, section 23 of the Missouri Constitution). While the bankers' appeal was pending in the court of appeals, the legislature enacted a new state mortgage law – section 443.454, RSMo – expressly prohibiting local municipalities from enforcing the type of ordinance the county enacted. The court of appeals dismissed the appeal as moot. The bankers appeal to this Court.

REVERSED AND REMANDED.

Court en banc holds: (1) The enactment of section 443.454 does not make this case moot. Although the county has argued on appeal it will not enforce the ordinance going forward, it also argues the ordinance remains valid under its charter authority, and it is undisputed that the county has not repealed the ordinance. In that light, the issues presented are not moot.

(2) The circuit court erred in granting the county summary judgment because the county exceeded its charter authority when enacting the ordinance, making the ordinance void. Article VI, section 18(c) of the state constitution authorizes a charter county to exercise legislative power pertaining to “any and all services and functions of any municipality or political subdivision, except school districts,” including police power designed to promote the health, welfare and safety of the people. When a charter county addresses a matter of purely local concern, to meet the county’s unique needs, the procedures specified in the charter supersede state statutes. The St. Louis County ordinance, however, explicitly states it was enacted to address “the national residential property foreclosure crisis” and its impact on the county. Local regulations meant to address a national crisis – which affect every county in the state – are not a matter of such distinctly local concern that the county is authorized to legislate pursuant to its delegated police power. The question of whether lenders and residential borrowers should be required to participate in a mediation program prior to foreclosure that mandates a lender obtain a certificate of compliance or face criminal prosecution is one of state interest. This finding is supported by the legislature’s enactment of section 443.454, which explicitly limits a local government’s authority to govern this area. Because the county did not have authority under article VI, section 18(c) to enact this ordinance, the ordinance is void and unenforceable.

(3) The bankers are not entitled to an award of attorney fees pursuant to their claim under the Hancock amendment, which prohibits a county from levying any tax, license or fees without voter approval. If a taxpayer prevails in a suit brought to enforce the Hancock amendment, the taxpayer is entitled to his or her costs, including reasonable attorney fees. Because the ordinance establishing the mediation program and the associated fees is void, the county has no authority to impose any fees. As such, no award of attorney fees is warranted.

Dissenting opinion by Judge Teitelman: The author would hold that the ordinance is a valid exercise of the county’s legislative power under article VI, section 18(c) of the Missouri Constitution because it is tailored precisely to the local symptoms of the foreclosure crisis and that section 443.454 does not apply. Article VI, section 18(c) authorizes a charter county to enact legislation concerning any and all county “functions.” A traditional incident of local government police power is the regulation of the use and disposition of real property. Like ordinances regulating the condemnation or zoning of property, the county’s foreclosure mediation program essentially regulates the disposition of real estate within the county’s borders – a valid exercise of the its police power within the purview of a governmental “function” subject to the county’s legislative power granted by article VI, section 18(c). The county’s ordinance is directed specifically at ameliorating purely local impacts or symptoms of the broader foreclosure crisis. Further, if the passage of section 443.454 could render the mediation program contrary to the general legislation of the public policy of the state as a whole, then the scope of the constitutional grant of legislative power to the county would be defined by the whim of the legislature rather than the text of the constitution. As such, section 443.454 does not apply.